

REMARKS

Reconsideration and allowance of the application based on the foregoing amendments and for other reasons, are respectfully requested.

The Action was made Non-Final in view of the decision made on 8/23/06 for the petition filed 5/30/06, and is based on amendments filed 4/7/06.

Claims 1 and 5-17 are pending in the application. Claims 2-4 and 18-20 stand cancelled.

Claims 1, 5, and 6 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner stated that "Claim 1 recites that the piece of fabric is 'of a width throughout its length to cover completely a child's buttocks and support the child comfortably...'", and opined that "This limitation renders the width of the fabric unclear and indefinite because children's buttocks can be of any number of varying sizes and cannot be definitively defined as a whole".

Applicant agrees that "children's buttocks can be of any number of varying sizes and cannot be definitively defined as a whole". But applicant urges that although some claim language may not be precise, it does not automatically render a claim invalid. In *Seattle Box v. Industrial Crating*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984), the Court found the "thickness of a tier of pipe" to be a tolerable limitation. A test is whether an expert would know the limitations of the claims. Many products reflect the sizes of children's buttocks. Witness children's car seats. See also *Shatterproof Glass v. Libby Owens Ford*, 758 F.2d 613, 225 USPQ 634 (Fed. Cir. 1985).

Ergo, applicant urges that claims 1, 5, and 6 are not indefinite for the buttocks limitation.

Claim 6 was objected to for the limitation "the middle of the sling" in lines 2-3, the Examiner saying that there was "insufficient antecedent basis for this limitation in the claim" because "the sling can be considered to have two middles, depending on which axis or dimension you are viewing the sling from and it is therefore unclear which middle Applicant is intended the limitations of the claim to encompass". Applicant intended the reference to the "elongated piece of fabric" to indicate which "middle". In the interests of further clarity, applicant has amended the claim to call for the "lengthwise middle".

Claims 1, 5-7, 15, and 16 were rejected under 35 USC 102(b) as being anticipated by Powell (5,950,887), the Examiner stating that "Powell discloses a child's support including a sling of an elongated piece of fabric (col. 4 line 43) of a width throughout its length and having a channel (3) between its ends for passing a branch of the sling there through". Applicant challenges that Powell discloses "a channel (3) between its ends for passing a branch of the sling there through". Powell's two rings (3) are at the end of his sling (1) as identified in his col. 4, lines 40 and 41. The rings (3) may be in the middle of the fabric before its being folded during manufacture to form the sling, but they are at one of the sling after its fabrication. Thus Powell does not anticipate the claims.

To further clarify that applicant is talking about a product as seen by the user and not while manufacturing, applicant has amended the claims to specify a sling "mounted-by-the supporter", and that the channel is "in between" the sling's ends.

Claims 1, 5, 6, and 15-17 were rejected under 35 USC 102(b) as being anticipated by Hathaway (4,139,131), the Examiner stating that "Hathaway discloses a child's support including a sling of an elongated piece of fabric (col.2 line 15) of a width throughout its length and having a channel (40) between its ends for passing a branch of the sling there through". The Examiner's statement omits the claim 1 limitation that the fabric is of a width throughout its length "to cover completely a child's buttocks and support the child comfortably". This is a structural limitation not taught by Hathaway who employs a child carrier 20 to support the child, a structure dispensed-with in applicant's novel invention. Thus Hathaway's long suspension strap 70, which he

undoubtedly kept as narrow as possible to save cloth and weight, does not anticipate applicant's invention.

Moreover, modifying Hathaway's strap 70 in the light of applicant's teaching is particularly improper when doing so requires exclusion of "other essential parts". *Edwards v. Simmons*, 12 USPQ 5 (Bd. of Appeals). Here, exclusion of Hathaway's carrier 20 is involved.

Regarding claim 5, modifying Hathaway's strap with a pocket to store child-care things would seem inconsistent with its nature as a strap and with its insertion through his loop 40.

Regarding claim 6, applicant urges that Hathaway's channel 40 does not extend cross-wise of his sling, but rather lengthwise.

Regarding claim 15, as noted above, Hathaway does not have a fabric structure that is of a width throughout its length "to cover completely a child's buttocks and support the child comfortably".

Regarding claim 16, it calls for "a first branch of the sling is passed across the front of the would-be carrier and around and up the back and through the channel on the shoulder of the would-be-carrier". Hathaway does not satisfy these limitations of this claim, either.

Regarding claim 17, it calls for "the other branch is passed around the back and to and across the front of the would-be carrier and up to and through the channel and tied in a knot with the first branch". Hathaway also does not satisfy these limitations of this claim.

Claims 1, 5, 6, and 15-17 were rejected under 35 USC 103(a) as being unpatentable over Hathaway in view of *Cummings et al* (6,595,396). The Examiner

stated, inter alia, that Cummings et al "discloses a child sling similar to the sling of Hathaway in that both sling have a central portion (16 and 22, respectively) from which two branches project (12/14 and 70, respectively). The branches (12/14 of Cummings et al sling are noticeably wider than those (70) of Hathaway."; and opined that "It would have been obvious ... to form the branches of the Hathaway sling wider, as taught by Cummings et al, as wider straps would spread the pressure applied to the user's shoulder over a greater width or area and make the sling more comfortable for the user to wear." Applicant agrees with the Examiner that wider straps would spread the pressure applied to the user's shoulder over a greater width or area and make the sling more comfortable for the user to wear.

However, Cummings et al do not solve the fundamental anticipating problem with Hathaway. As noted above, Hathaway does not employ a fabric that is of a width throughout its length "to cover completely a child's buttocks and support the child comfortably". Nor do Cummings et al. Cummings et al form "a holding portion 16 fabricated from panels of fabric sewn together using stitching 18 of sufficient strength to hold a child" (col. 2, lines 43-45). This is not a fabric that is of a width throughout its length "to cover completely a child's buttocks and support the child comfortably".

Claims 1, 5, 6, and 15-17 are patentable over Hathaway in view of Cummings et al.

Claims 7-14 were rejected under 35 USC 103(a) as being unpatentable over Hathaway or Hathaway in view of Cummings et al, either in view of Cordisco (5,071,047); the Examiner observing that neither includes the sling being worn on a carrier's back. Applicant agrees with the Examiner's observation that neither Hathaway nor Cummings et al "includes the sling being worn on a carrier's back".

But applicant urges that claims 7-14 are patentable over Hathaway or Hathaway in view of Cummings et al, both in view of Cordisco. Claims 8-14 are dependent, directly or indirectly, on claim 7.

As observed above, neither Hathaway alone nor Hathaway in view of Cummings et al teach an "elongated piece of fabric having a channel disposed in between its ends so as to be in the lengthwise middle of the would-be-carrier's lower back when the sling is looped over the carrier's head" and as called for in claim 7. Thus applicant submits that the original Hathaway sling and the modified Hathaway sling each do not include the claimed structural features. Cordisco's teaching that though a sling can be mounted on the front of a carrier, the same sling can also be worn on the carrier's back without having to modify the structure of the sling, will not remedy the basic failures of the Hathaway and of the Hathaway in view of Cummings et al teachings.

Regarding claims 11 and 12, applicant challenges whether the knot of either Hathaway sling is capable of being loosely tied or tightly tied, or that any knot can be. Hathaway employs buttonholes 76, one of which is selectively engaged with a button 72 (col. 4, lines 41, 42). This does not seem synonymous with "loosely tied".

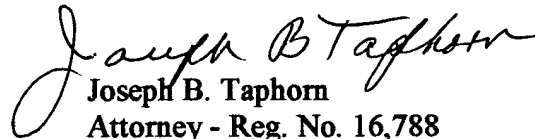
Applicant also agrees with the Examiner that "The manner in which the knot is formed does not take away from or define over the fact that in the end, a knot is formed in either of the Hathaway slings". However, applicant wishes to note that in an intermediate state, applicant's sling has a loose knot, and the art does not teach that intermediate product.

Regarding claims 13 and 14, the Examiner stated that "the pocket (37) of either Hathaway sling is in a branch of the sling that would not be directly entangled in a knot formed therein, and is this considered by the Examiner to be beyond the knot, effectively satisfying the limitations of the claim". Reconstructing a prior art device in the light of applicant's teaching is improper. Reconstructing a prior art device is further improper where it would render the device of the reference unsatisfactory for its intended purpose; one skilled in the art would not modify such device to make it unsuitable for its intended purpose. Ex parte Rosenfeld, 130 USPQ 113 (Bd of Appeals 2/1/61). The pocket in Hathaway is where it is to form a rigid seat 22'. Locating it elsewhere would render it unsatisfactory for its rigid seat forming purpose.

It is also urged that the use of Hathaway's pocket 37 to receive a reinforcing member to form a rigid seat 22' precludes consideration of it as a storage place for child-care things.

Wherefore it is believed that the claims, particularly as amended, are not indefinite, are not anticipated by Hathaway or obvious on Hathaway in view of Cummings et al or obvious on Hathaway in view of Cummings et al in view of Condisco, that the claims represent a child's sling quite different from what has existed heretofore, and that this application has been placed in condition for allowance, which favorable action at an early date is earnestly solicited.

Respectfully submitted,



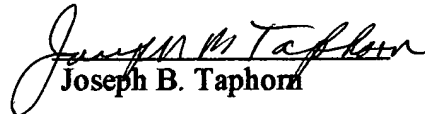
Joseph B. Taphorn

Attorney - Reg. No. 16,788

Tel and Fax 845/462-3262

E-mail jbtaphorn@prodigy.net

CERTIFICATE OF MAILING - The undersigned certifies that this correspondence addressed to the Commissioner for Patents, P.O. 1450, Alexandria, VA 22313-1450 Non-fee Amendments, has been deposited in the United States Postal System as first class mail with sufficient postage on March 22, 2007.



Joseph B. Taphorn